APPENDIX.

[Letterhead]

December 27, 1966

Re: ANDERS, Charlie A-42880

Office of the Attorney General
600 State Building
Los Angeles, California

Attention: George Roth, Deputy Attorney General

The following information is submitted per your phone request on December 23, 1966.

Charlie Anders was originally received by the Department of Corrections on July 18, 1951 under commitment from the Superior Court of Los Angeles County for the offense of Burglary 1st (459-Penal Code) (Probation Revoked) and Possession of Narcotics (11500 Health & Safety Code) and prior felony conviction to run concurrently; that on February 24, 1954 he was released on parole. On August 6, 1954 he was returned to the Department of Corrections as a Parole Violator to finish term and was finally discharged on January 20, 1957.

On August 12, 1957 he was received at the California State Prison at Vacaville under commitment from the Superior Court of Merced County for the offense of Possession of Narcotics (11500 Health & Safety Code and released on parole on August 31, 1959.

On June 16, 1960 he was received at the California State Prison at San Quentin as a Parole Violator to finish term and again released on parole on August 12, 1962.

On January 22, 1964 he was received at the California State Prison at Chino as a Parole Violator with new term of Burglary 2nd (459-Penal Code) and two prior felony convictions consecutive with prior term from the Superior Court of San Bernardino County after being at large for one year, 2 months and 22 days.

On January 13, 1966 he appeared before the Adult Authority at which time his terms were fixed at 7 years and 3 years consecutive and granted parole effective July 22, 1966 with a Special Condition "To go to family in Michigan.

On July 13, 1966 the Adult Authority rescinded the action fixing term and granting parole due to inmate having been rejected by Michigan for "Out of State" placement and he was placed on the January, 1967 Adult Authority Calendar for further consideration.

I trust the above covers all the necessary information needed for your purpose. Please feel free to contact the undersigned if we may be of further assistance.

Very truly yours,

ARTHUR L. OLIVER, WARDEN

/s/ GLEN E. SMITH,
Glen E. Smith,
Records Officer III

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suffice to assure an indigent a conscientious decision by appointed counsel not to brief or argue the case. Third, that in any event an indigent receives an adequate review on the merits by the appellate court despite the fact that he is unrepresented.

All three assumptions, in petitioner's view, are erroneous.

First, there is no evidence to suggest that all appointed attorneys act conscientiously, although undoubtedly a great number of appointed counsel do so. Petitioner's point, however, is that a procedure more adequate than California's is necessary to assure diligent effort.

Second, where a conclusory no-merit letter is filed under the California procedure, the appellate court receives a "cold record" supported at best by the indigent's *pro se* brief, such as it is. No professional effort focuses the court's attention (or the attention of a research-attorney law clerk) on the critical question—whether there are non-frivolous legal issues which require lawyer advocacy. The procedure is not an adequate check on the efforts of appointed counsel because the question, invariably, at the appellate court level is whether or not the conviction should be reversed, not whether an attorney should brief and argue the case.

The District of Columbia practice, on the other hand, focuses on whether the lawyer should proceed. This provides a much greater stimulus to conscientious effort. The attorney does not have the opportunity to avoid preparing a brief. The criteria of frivolity (which excuse the attorney from proceeding) are much more demanding than the criteria for affirmance, especially as the court does not have the benefit of counsel-prepared arguments. Thus the "temptation" to refuse to proceed is much reduced.

Third, under the California system some indigents will not in fact receive the adequate appellate review required by *Douglas* v. *California*, 372 U.S. 353 (1963), because there will be instances where non-frivolous issues are rejected in appellate proceedings in which an indigent is not represented by counsel.

The recent case of *Patterson* v. *Cruz*, 363 F.2d 879 (10th Cir. 1966) (adopting the opinion of the District Court, 253 F. Supp. 805) is persuasive in this regard. Prior to *Douglas* v. *California* an indigent defendant was denied appointed counsel on his appeal. The conviction was affirmed. The indigent later sought state habeas corpus and the Colorado Supreme Court appointed an attorney to determine whether reviewable reversible error had occurred which had not adequately been brought to the Court's attention in the indigent's original *pro se* brief. The attorney reported that there was no error. Habeas was denied and the original conviction was "reaffirmed." The indigent then successfully sought federal habeas relief. *Cruz* v. *Patterson*, 253 F. Supp. 805 (D.C. Colo. 1966). The court concluded that counsel had acted as an *amicus* to "screen" the case for the state court. It found this "screening" process analogous to that found invalid in *Lane* v. *Brown*, 372 U.S. 477 (1963). The *Cruz* court said:

> "The procedure followed in the present case likewise conferred upon an attorney, appointed by the Colorado courts, the power to deprive the indigent defendant of the right to have his case presented to the appellate court by an attorney acting as an advocate of his client's cause." 253 F. Supp. at 809-810.

This passage is also applicable to the California procedure. Appointed counsel "screens" the indigent's case and